



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: DECEMBER 22, 2022

IN THE MATTER OF:

Appeal Board No. 625732

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determination, holding the claimant eligible to receive benefits, effective April 11, 2022. The employer requested a hearing and objected contending that the claimant should be disqualified from receiving benefits because the claimant lost employment through misconduct in connection with that employment and that wages paid to the claimant by such employer should not count in determining whether the claimant files a valid original claim in the future.

The Administrative Law Judge held a telephone conference hearing at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed September 07, 2022 (A.L.J. Case No.), the Administrative Law Judge overruled the employer's objection and sustained the initial determination.

The employer appealed the Judge's decision to the Appeal Board.

Our review of the record reveals that the case should be remanded to hold a further hearing. The employer was not afforded the opportunity to present evidence and testimony as to the reason for the claimant's separation.

Significantly, the basis for the hearing is outlined in the initial determination of eligibility, and, when read in conjunction with the employer's hearing request, sets forth, with "sufficient particularity" (12 NYCRR § 461 [1] [b]) the issues to be discussed so to allow for a hearing on

the merits. In this regard, additional testimony and evidence will be taken regarding the claimant's separation from employment, the claimant's purported

sleeping on the job, warnings given to the claimant, and whether the employer was aware of any conditions or medications which might have precipitated such conduct.

Any documentary evidence in support of such testimony shall be produced at hearing for entrance into the record after the opportunity for objection.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues ONLY, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issue, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER